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SERVICE DATE – SEPTEMBER 21, 2005

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 208X)

UNION PACIFIC RAILROAD COMPANY–ABANDONMENT EXEMPTION–IN
MARSHALL COUNTY, KS

Decided: September 20, 2005

By decision and notice of interim trail use or abandonment (NITU) served on December 17, 2003, a 180-day period was authorized for Union Pacific Railroad Company (UP) to negotiate an interim trail use/rail banking agreement with the Nebraska Trails Foundation, Inc. (NTF) for an 8.13-mile line of railroad from milepost 133.13 near Marysville to milepost 125.00 near Marietta, in Marshall County, KS. The negotiating period under the NITU was extended several times; the latest extension was scheduled to expire on September 8, 2005.¹

On September 9, 2005, NTF filed a request for an additional 90-day extension of the negotiating period until December 8, 2005. NTF states that the additional time is needed due to ongoing negotiations with UP. UP filed its response stating that negotiations are moving forward and that it is willing to continue negotiations for interim trail use/rail banking with NTF.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and is willing to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended until December 8, 2005.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. NTF's request to extend the NITU negotiating period is granted.

¹ The most recent extension of the negotiation period under the NITU was authorized by decision served June 22, 2005.

2. The negotiating period under the NITU is extended to December 8, 2005.
3. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary